

Assembly Bill 3051 (Papan)

Campaign: Independent Expenditure Disclosure

Version: As amended, June 25, 2002

Status: Passed Senate Elections; in Appropriations

Summary of Proposed Bill

This bill would require that telephone, broadcast and mass mailing advertisements paid for by independent expenditures of \$5,000 or more include the following: 1) a disclaimer that the advertisement was not produced in coordination with a candidate, 2) the name of the “independent expenditure committee,” 3) the cost of the advertisements and 4) whether the advertisement was produced in support of or opposition to a specific candidate.

Existing Law and Regulations

Government Code Section 84506, added by Proposition 208, requires committees that make independent expenditures for broadcast and mass mailing advertisements to disclose their top two contributors. In emergency regulation 18450.4, the Commission applied the disclosure requirement in this section to those contributors of \$50,000 or more to conform to similar reporting requirements in sections 84503 and 84504. This regulation was adopted on a permanent basis at the May 10, 2002 Commission meeting.

Current law does not expressly speak to prerecorded telephone messages. However, the Commission has tentatively determined that pre-recorded telephone messages are included in the definition of broadcast advertisements for purposes of section 84506, and are required to include the disclosures required in that statute.

Background

Assemblyman Papan introduced this legislation in response to an independent expenditure campaign opposing his daughter’s primary election bid for an Assembly seat. He feels the bill addresses the widespread problem of independent expenditure committees funding misleading campaigns against candidates.

Discussion and Policy Considerations

The March 2002 legislative primaries were the first regular elections held under Proposition 34’s contribution limits. Possibly because of these limits, a greater number of individuals and entities chose to make independent expenditures supporting or opposing legislative candidates in broadcast advertisements, newspaper ads, and in direct mail campaigns. This move to regulate the largely unregulated area of independent expenditures was seen much earlier in Los Angeles, San Francisco and some other local jurisdictions where contribution reform schemes were to some degree thwarted by “non-candidate spending.” Not long after its first few elections under contribution limits, San Francisco enacted an independent expenditure ban, which was found

unconstitutional by a federal court. San Francisco subsequently adopted a more narrow approach to regulating independent expenditure campaigns. Los Angeles recently enacted a ban on independent spending from the treasuries (distinguished from the political action committees) of unions and non-profit corporations, and amended its campaign reform ordinances to increase expenditure caps and matching funds when independent expenditures reach certain levels.

The author has amended this bill to address many of the concerns expressed in the Commission staff's legislative analysis presented at the June meeting. Among the amendments made:

- The language that the advertisement was "produced without the permission or authorization of any candidate" has been amended to read "this paid advertisement was not produced in coordination with any candidate."
- The threshold for requiring disclosure under this bill has been lowered from \$50,000 to \$5,000 and the references to Government Code Sections 84503 and 84504 have been eliminated.
- The bill now requires the identification of the name of the candidate that is supported or opposed in the advertisement.
- Clarifying language was added to the font size on the printed advertisement disclosure to indicate that the requirements apply only to this bill.

The author has left unchanged two provisions of the bill that may be challenged in court: the requirement that the cost of the advertisement be disclosed in the ad, and the requirement that the "not produced in coordination with any candidate" disclaimer be spoken at the beginning of and displayed in text throughout any television advertisement. If these or other provisions of the bill were challenged, the Commission would not only be charged with defending the statute, but would likely be ordered to pay attorneys fees and court costs if the plaintiffs prevailed. Based on past litigation, the Legal Division staff estimates the potential cost to be in the \$200,000 to \$250,000 range.

Member Communication: Under current law, the definition of advertisement "does not include a communication from an organization *other than a political party* to its members" [Emphasis added.] (Government Code Section 84501) Assembly Bill 3051 was recently amended to provide that, for purposes of the bill's independent expenditure disclosure requirements, "'advertisement' does not include a communication from an organization to its members." Since this new exception language does not carve out party member communications as the definition section does, it will result in all member communications being exempt from the bill's requirements. This was not the express intent of the committee, but appears instead to be inadvertent.

Recommendation: Remain neutral.